IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

Crl.Rev.Pet.No. 442 of 1998(S)

CRA.180/1995 of ADDL.SESSIONS COURT-II, KOZHIKODE
CC.166/1992 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOZHIKODE
.....

REVN. PETITIONER: APPELLANT/ ACCUSED

KUNNUMMAL KHADER, S/O. ABDURAHIMAN,
HOUSE NO.15/73,
NAINAM VALAPPIL NAGARAM AMSOM,
KOZHIKODE TALUK.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS: RESPONDENTS/ COMPLAINANT AND STATE
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1. **THE SUB INSPECTOR OF POLICE,**
   NADAKKAVU POLICE STATION.

2. **STATE OF KERALA, REP.BY**
   PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 04/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRL.RP. NO.442/1998

ORDER ON CRL.MP. NO.2399/1998 IN CRL.RP. NO.442/1998

DISMISSED

04.07.2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P.A. TO JUDGE

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K.R.UDAYABHANU, J

Crl.R.P.No.442 of 1998

Dated this the 4th day of July, 2007

O R D E R

The revision petitioner is the accused who stands convicted for the offence under Section 420 IPC and sentenced to undergo R.I. for three months and to pay a fine of Rs.15,000/- and in default, to undergo simple imprisonment for three months. It is also directed that out of the fine amount Rs.12,000/- shall be paid to PW1.

2. The prosecution case is that the accused cheated the defacto complainant promising to arrange visa to the Middle East and obtained a sum of Rs.9,000/-.

3. The evidence adduced in the matter consisted the testimony of PWs' 1 to 8 and Exts. P1 to P5.

4. The contentions of the revision petitioner is that subsequent to the alleged cheating an agreement was executed on 8.12.1987 promising to repay the amount and hence the only remedy available to the complainant is to initiate civil proceedings. The contention was considered by both the courts

below and it was held that as the proceedings are not based on the agreement but on the basis of the alleged cheating committed in November, 1984. Just because of the execution of Ext. P4 the cause of action cannot be treated as having been obliterated. On a consideration of the judgments of the courts below, I am not inclined to take a different view on the matter. The conviction is confirmed.

5. All the same, considering the plea of the counsel for the revision petitioner that the accused is aged 79 years and that the crime is of the year 1991, the sentence is modified to imprisonment till the rising of the court and to pay a compensation of Rs.15,000/- to the defacto complainant/PW1 and in default, to undergo simple imprisonment for one month. The revision petitioner shall appear before the Judicial First Class Magistrate Court-I, Kozhikode on 6.8.2007 to receive the sentence.

The criminal revision petition is disposed of as above.

K.R.UDAYABHANU,
JUDGE

csl